

**NEW YORK STATE COMMISSION
ON CABLE TELEVISION**

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December 14, 1992

DEC 15 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: MM Docket No. 92-260

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Dear Ms. Searcy:

I am enclosing herewith an original and nine copies of reply comments submitted by the New York State Commission on Cable Television in the above-referenced proceeding.

Very truly yours,


John L. Grow
Counsel

Encs.

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DEC 15 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television Consumer)	MM Docket No. 92-260
Protection and Competition Act of 1992)	
Cable Home Wiring)	

REPLY COMMENTS OF THE NEW YORK STATE
COMMISSION ON CABLE TELEVISION

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New York State Commission
on Cable Television
Corning Tower Bldg.
Empire State Plaza
Albany, New York 12223
(518) 474-4992

Dated: Albany, New York
December 14, 1992

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

**FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Implementation of the Cable Television Consumer)
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MM Docket No. 92-260

Cable Home Wiring)

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**REPLY COMMENTS OF THE NEW YORK STATE
COMMISSION ON CABLE TELEVISION**

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1. The New York State Commission on Cable Television ("NYSCCT") respectfully submits comments in reply to comments of interested parties submitted in response to the Notice of Proposed Rulemaking ("NPRM") released in this docket November 6, 1992.

2. In its initial comments, NYSCCT emphasized the limited scope of the statutory directive in this proceeding (para. 3) and urged the Federal Communications Commission ("Commission") to adopt the minimum rules necessary to implement that mandate (para. 22). NYSCCT also maintained that the transcendent issue in respect to home wiring is the safety, adequacy and reliability of the service provided to the subscriber's television receiver and that responsibility for the quality and safety of the service delivered must necessarily remain with the cable operator (or other multichannel video programming distributor) irrespective of the ownership of the internal wiring. The initial comments also expressed the concern that a rulemaking in this docket could be more disruptive than

constructive (para. 22) and that the benefits of owning internal wiring are more illusory than real (para. 25).

3. Having reviewed the initial comments of various parties in this docket, it is even more apparent that this rulemaking has the potential to disserve the vast majority of cable subscribers. On the one hand, the comments of certain cable operators in this proceeding suggest a number of potential adverse implications for subscribers. On the other hand, a number of parties -- competitors and would be competitors to cable operators -- have asked the Commission to seize the home wiring issue by adopting rules that are designed primarily to serve their competitive interests, if not the interests of most subscribers.

4. Telecommunications, Inc. ("TCI") suggests, in its comments, that the Commission's rules should require subscriber ownership of wiring for all new installations and that "start up charges will need to increase correspondingly." (TCI, pg. 8) Cablevision Systems Corporation suggests that the obligation by cable companies to offer subscribers the opportunity to acquire home wiring upon termination is just cause for requiring security deposits from subscribers to cover the potential cost of the transfer of the wire at the time service is terminated. (See: Cablevision Systems Corp., pg. 4) TKR Cable suggests that once subscribers are deemed to own the internal wiring that a maintenance charge imposed by the cable operator will be warranted. (TKR Cable, pg. 10)

5. As NYSCCT noted in its initial comments, most installations are made at standard fixed charges which do not necessarily encompass the entire cost of an installation, and New York cable operators do not impose wire maintenance fees even where the

internal wire is owned by the residential subscriber. NYSCCT is also unaware of any cable television company in New York which currently imposes a security deposit for the cost of the home wiring as such. The Commission should seek to avoid these consequences which are not required by the statute and which would needlessly increase the cost of cable services to subscribers in conflict with the more explicit goal of ensuring reasonable rates in Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"). At the very least, it would be premature for the Commission to adopt rules in this docket that might predetermine or set standards for the scope of installation charges before the Commission has solicited and reviewed comments in MM Docket No. 92-266 concerning cable rate regulations.

6. As noted, many commentors have emphasized a pro-competitive dimension to the home wiring issue relying, in part, on the provision in the House Report that provides:

"This right [to acquire home wiring] would enable consumers to utilize the wiring with an alternative multi-channel video delivery system and avoid any disruption the removal of such wiring may cause." (House Report, pg. 118)

It is easy to place too much emphasis on this sentence. The fact is that consumers can't use internal wiring for alternative multichannel video programming distributors if there are no alternative distributors in the neighborhood. In this regard, it must be noted that the underlying rationale for the 1992 Act was the lack of competitive alternatives to cable.

Section 2(a)(2) of the 1992 Act provides:

"For a variety of reasons, including local franchise requirements and the extraordinary expense for constructing more than one cable television system to serve a particular geographic area,

most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers." (Emphasis added)

This legislative finding reflects the situation for the overwhelming majority of cable operators and subscribers. In New York State, for example, but for a few thousand dwelling units in the City of New York, there is no area where competing cable systems offer service to the same subscribers. There are somewhat larger areas where MMDS or SMATV systems are available, but it is disingenuous for MMDS and SMATV (or telephone interests) to argue that the rules in this proceeding should be designed primarily to facilitate their opportunity to provide service. Central to these pro-competitive arguments is the assumption that the installed wiring will serve the purposes of the subscriber and the alternate user without modification and that it will save the customer both money and inconvenience. (See: e.g., NYNEX, pp. 2, 3, USTA, p. 5, Bell Atlantic, pp. 2, 3 and Liberty Cable, pp. 3, 4) There is no substantial evidence that the existence of home wiring (as distinct from hallway or common area wiring) will necessarily result in the use of that wiring by competitors or, more particularly, that it will result in reduced cost to the subscriber for the installation. Indeed, the installation practices and installation charges of SMATV systems and MMDS systems aren't even regulated.

7. The difficulty of promoting competition between regulated cable operators and unregulated alternatives is demonstrated in the comments of Liberty Cable, a satellite master antenna television operator in New York City. By its own count, Liberty Cable serves approximately 7,000 subscribers in the greater New York City area. (There are

approximately 425,000 cable television subscribers in the Borough of Manhattan alone.) Liberty Cable also states that, to the best of its knowledge, it is the only SMATV in the country that is successfully overbuilding and competing head-to-head with a cable operator.¹ (Liberty Cable, pg. 1) Liberty Cable asks the Commission to declare all cable home wiring to be a fixture which, in the case of an apartment house, would vest ownership of the wiring in the landlord. Since SMATV systems have attempted for many years to negotiate exclusive agreements with landlords and are free to share their receipts with the landlord,² a policy which declares the wiring internal to each apartment to be a fixture would provide one more advantage to those landlords who would seek to control the delivery of video programming to their tenants.

8. At the same time, Liberty Cable claims that Section 828 of the New York State Executive Law -- which confers upon tenants of multiple dwelling units the right to receive franchised cable service and upon the cable operator the right of access -- should be preempted because it hinders the growth of SMATV. (Liberty Cable, pg. 12) In this context, Liberty Cable's assertion that building owners do not want the disruption of a second cable service implies that Liberty Cable would welcome the opportunity to negotiate exclusive contracts with building owners that would preclude access by the franchised cable operator or other competitors. This is hardly the type of competition to be fostered by

¹ If this is true, it is even more evident that cable operators are not subject to competition even from alternative providers.

² Section 828 prohibits the cable operator from interfering with existing MATV or SMATV systems on the premises, prohibits any payment for access in excess of just compensation and has been otherwise administered to prevent a franchised cable operator from entering into exclusive agreements with landlords.

federal communications policy. As NYSCCT has noted in comments in other matters, the existence of a single provider in an apartment house, whether it is a franchised cable operator or an SMATV or wireless cable system, amounts to a lack of competition. A law such as Section 828 of the New York State Executive Law is pro-competitive inasmuch as it enables tenants to receive video programming from the franchised cable operator without excluding non-franchised providers of video programming.

9. Other statements by Liberty Cable in its comments vary from the understanding of NYSCCT. For example, Liberty states that it "generally places its feeder cables in the same conduits and molding as Time Warner. . ." (at pg. 9). This appears to be an overstatement. Rarely, can Liberty use the same conduit due to lack of space and interference/leakage concerns. NYSCCT knows only of a few instances where the same molding is used.

10. Liberty also urges the Commission to rule that any owner of cable home wiring can appoint an agent, including a competing multichannel programming distributor, to arrange for and implement the termination of existing cable TV service. In the experience of NYSCCT, this has not been particularly successful in the metropolitan New York City area.

11. In sum, it is the position of NYSCCT that home wiring is not the right vehicle to promote meaningful competition to cable operators throughout the country and should not be the guiding principle in this rulemaking. It is not clear at this time that a subscriber's ownership of home wiring will necessarily enhance competition or serve the subscriber's interest. It is enough now to ensure that cable operators not be permitted to

remove wiring for anti-competitive purposes. For the future, the Commission should monitor the issue while assessing the availability and technological features of other competing broadband services, if any.

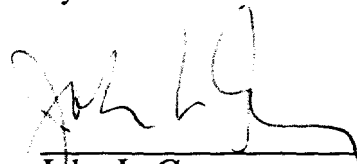
12. NYSCCT also takes the opportunity of these reply comments to address a few other issues. In its initial comments, NYSCCT emphasized the critical function that internal wiring plays in the delivery of cable services and attempted to demonstrate that signal quality and safety concerns demand that the cable operator or other service provider bear responsibility for the service delivered to the television receiver. In this regard, the comments of Cablevision Systems Corporation that home cable wiring is more akin to electrical wiring which can cause extensive damage are in accord with NYSCCT's position. (Cablevision Systems Corp., pg. 7) Thus, we agree with those who argue that signal leakage from home wiring and service quality should be the responsibility of the particular video programming distributor. (See: e.g., TCI, pg. 10, TKR Cable, pg. 4) In the initial comments, NYSCCT argued that the internal wiring may need to be replaced from time to time due either to wear and tear or system upgrades or rebuilds. In this regard, we agree with those commentators who emphasize that the rules should not require a cable operator to use home wiring owned by the subscriber (See: e.g., TKR Cable, pg. 7) and, in particular, where replacement is needed for an upgraded system. (TKR, pg. 11) It follows that if the cable operators are responsible for providing service, that the cable operator must have a right to access to the premises for purposes of maintaining and upgrading service regardless of ownership.

13. Consistent with the position that the rules adopted herein should be minimal, we agree with those parties who urged the Commission to avoid any attempt to address pre-termination ownership. (NCTA, pg. 4, Continental, pg. 7) We also generally agree that the Commission rules should not disturb existing relationships (NCTA, pg. 11, Continental, pg. 6) particularly those pertaining to commercial subscribers where the disposition of wiring should be governed essentially by contractual arrangements (Cablevision, pp. 5, 6) In fact, there seems to be no basis in the statute or legislative history for any rules that affect commercial subscribers. It is also abundantly clear that rules should not apply to common wiring.

Respectfully submitted,

NEW YORK STATE COMMISSION
ON CABLE TELEVISION

By:



John L. Grow
Counsel

Dated: Albany, New York
December 14, 1992

CERTIFICATE OF SERVICE

I, Theresa A. Cenci, do hereby certify that I have, this 14th day of December, 1992, caused copies of the foregoing "Reply Comments of the New York State Commission on Cable Television" to be served on the parties listed below by first-class, United States mail, postage prepaid:

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